

**REMARKS**

A review of the claims indicates that:

A) Claims 2, 3, 8—15, 17, 18, 23—31, 33, 34, 36, 37, 46, 47, 49 and 50 remain in their original form.

B) Claims 1, 16, 32, 35, 45 and 48 are currently amended.

C) Claims 4—7 and 19—22 are cancelled.

D) Claims 38—44 are withdrawn.

In view of the following remarks, Applicant respectfully requests reconsideration of the restriction.

**Traversal of Rejection of Independent Claim 1**

The Patent Office rejected all independent claims, i.e. Claims 1, 16, 32, 35, 45 and 48, under Section 102 as being anticipated by Koschany (US 2004/0072041). All dependent claims were rejected in a single reference Section 103 rejection based on Koschany. The Applicant respectfully traverses the rejection.

**Claim 1** recites an apparatus, comprising:

- a fuel cell for producing a flow of electric charges from a fuel;
- an electric charge counter coupled with the fuel cell, wherein counted electric charges are proportional to an amount of the fuel used in the fuel cell to produce the counted electric charges, wherein the electric charge counter:
  - counts electric charges by integrating the flow of electric charges with respect to time;
  - counts electric charges by measuring a voltage proportional to a flow rate of the electric charges and by assigning a frequency to the voltage;
  - varies the frequency in proportion to changes in the flow rate of the electric charges over time; and
  - increments the count of the electric charges at an incrementing rate proportional to the frequency; and

- a display coupled with the electric charge counter to show an amount of the fuel based on corresponding counted electric charges.

The Applicant has amended Claim 1 to recite the elements of original Claims 4—7. Accordingly, Claim 1 retains the exact scope of original Claim 7. Accordingly, the Applicant will address the Section 103 rejection applied to Claim 7.

Claim 1 recites, counting electrical charges by “measuring a voltage proportional to a flow rate of the electric charges and by assigning a frequency to the voltage”, varying “the frequency in proportion to changes in the flow rate of the electric charges over time” and incrementing “the count of the electric charges at an incrementing rate proportional to the frequency”. The Applicant respectfully submits that, at least, the Koschany reference does not teach or suggest (1) any use of voltage and an associated assigned frequency, (2) any variance of such a frequency in proportion to flow rate changes, and (3) incrementing a count proportionally to the frequency.

1. Koschany does not teach or suggest counting “electric charges by measuring a voltage proportional to a flow rate of the electric charges and by assigning a frequency to the voltage”.

The Koschany reference simply does not provide any teaching of, or assignment of, a frequency. In fact, the Patent Office does not point to any location in Koschany, and appears to concede the Koschany does not teach or suggest the elements recited. Accordingly, the Applicant respectfully submits that the Koschany reference is deficient to support the Section 103 rejection.

2. Koschany does not teach or suggest varying “the frequency in proportion to changes in the flow rate of the electric charges over time”.

1 The Koschany reference simply does not provide any teaching of varying  
2 frequency in proportion to a change in flow rate. In fact, the Patent Office does  
3 not point to any location in Koschany, and appears to concede the Koschany does  
4 not teach or suggest the elements recited. Accordingly, the Applicant respectfully  
5 submits that the Koschany reference is deficient to support the Section 103  
6 rejection.

7 3. Koschany does not teach or suggest incrementing "the count of the  
8 electric charges at an incrementing rate proportional to the frequency".

9 The Koschany reference simply does not provide any teaching of using  
10 frequency as a tool in counting charges. In fact, the Patent Office does not point to  
11 any location in Koschany, and appears to concede the Koschany does not teach or  
12 suggest the elements recited. Accordingly, the Applicant respectfully submits that  
13 the Koschany reference is deficient to support the Section 103 rejection.

14 4. Koschany does not teach or suggest incrementing "the count of the  
15 electric charges at an incrementing rate proportional to the frequency".

16 The Patent Office, in an effort to show a teaching or suggestion of almost  
17 all of the elements of the dependent claims, provides these features by seemingly  
18 to rely on personal knowledge, without pointing to any specific teaching or  
19 suggestion in the Koschany reference. Specifically, the Patent Office relies on  
20 personal knowledge that it would have been obvious for the Applicant to (1) any  
21 use of voltage and an associated assigned frequency, (2) any variance of such a  
22 frequency in proportion to flow rate changes, and (3) incrementing a count  
23 proportionally to the frequency.  
24  
25

According to 37 CFR §1.104(d)(2), “[w]hen a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.” If this rejection is maintained on a similar basis in a subsequent action, the Applicant respectfully requests the Examiner to supply such an affidavit to support the assertion that the use of a frequency associated with a voltage, variance of the frequency in response to flow rate change, and incrementing charge count in proportion to the frequency would have been obvious. Otherwise, and without additional support, it is respectfully submitted the Action’s conclusion does not represent the conclusion of a person of ordinary skill at the time of invention.

**Claims 2, 3 and 8—14** depend from Claim 1 and are allowable due to their dependence from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in Claim 1, are neither disclosed nor suggested in references of record, either singly or in combination with one another.

**Claims 16, 32, 35, 45 and 48** have been amended in a manner similar to Claim 1. Accordingly, these claims are allowable for at least the reasons that Claim 1 is allowable, and the remarks and arguments from above are copied by reference herein.

**Claims 17, 18, 23—31, 33, 34, 36, 37, 46, 47, 49 and 50** depend from their respective base claims and are allowable at least for that reason. These claims are

also allowable for their own recited features that, in combination with those recited in the base claims, are neither disclosed nor suggested in references of record, either singly or in combination with one another.

**Conclusion**

The Applicant submits that the claims as presented are in condition for allowance. Accordingly, the Applicant respectfully requests that a Notice of Allowability be issued. If the Patent Office's next anticipated action is not the issuance of a Notice of Allowability, the Applicant respectfully requests that the undersigned attorney be contacted to schedule an interview.

Respectfully Submitted,

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